

MICHIGAN PROBATE JUDGES ASSOCIATION

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February 22, 2011

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Senator Rick Jones
Chair of Senate Judiciary Committee
915 Farnum Building
Lansing, Michigan

In Re: Senate Bills 188 and 189
Juveniles & Sex Offender Registration

Senator Jones:

On behalf of the Michigan Probate Judges Association we wish to support the passage of Senate Bills 188 and 189 as it relates to juveniles. For many years, probate judges have encouraged the passage of legislation which addresses juveniles and the devastating effect of the Sex Offender Registration. We applaud your efforts and want to give our assistance in this passage should you find that helpful.

The goal for juveniles in the criminal system is rehabilitation. The adjudication of a youth who is less than 17 years of age for a criminal sexual conduct crime with the attendant requirement of placement of that youth on the Sex Offender Registry actually has the opposite effect. Rehabilitation is enhanced by not placing these youth on the Registry. Otherwise, they are disproportionately unemployed, uneducated and increasingly pushed to the fringe of society.

These bills accomplish many things qualitatively but also economically. The passage of these bills ensures federal compliance so that there are no penalties for Michigan's federal funding. The additional economic savings is really in the practical application of these bills. Michigan law enforcement will no longer be tracking down adolescents who are sexually experimenting -- the Romeo & Juliet analogy. Rather, law enforcement will be going after and keeping tabs on the real predators who continue to plague our communities. Society is best protected by a system that effectively focuses on true predators (whether juvenile or adult) and does not cast such a wide net that troubled juveniles who do not pose a threat are punished for 25 years by being listed as sex offenders.

To summarize, we clearly support passage of these bills which will bring a sense of humanity for our youth and bring us into compliance with the federal statute, known as SORNA. All of this being said, we would encourage a look at a couple of provisions which we recommend by way of revision of these bills:

1. Bill 188 has a provision which starts at page 15, Section 3A. It provides as follows: "notwithstanding anything else to the contrary in this act, the court may order any individual less than 17 years of age who is convicted of a Tier I, Tier II, or Tier III offense to register under this act if the court determines that the individual may be a continuing threat to the public." This is a wonderful piece of language in that it gives judges the discretion to include those youth who we see as a continuing threat where the Sex Offender Registry would be appropriate. Our proposal is that given that judges have the discretion to **include** it would be our recommendation that judges be given the discretion to **exclude**. Juvenile Court Judges see these youth for long periods of time and their rehabilitation, or lack thereof, is something that is closely monitored. It would be very appropriate for those youth who are clearly rehabilitated to be excluded from the Sex Offender Registry.

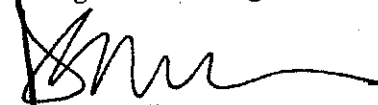
Michigan has a Criminal Sexual Conduct (CSC) 2nd degree for which there is not a comparable federal analogy. Superimposing SORNA onto the Michigan laws has created an inequity under this same subsection. So, for example, a 14 year old *playing doctor* with a 12 year old and there is no penetration has to register as Tier III; but a 14 year old who *forcibly touches* a 13 year old and there is no penetration does not have to register. It is our recommendation that this anomaly be resolved.

2. The provisions on the entities which are obligated to register juveniles – DHS, sheriff and the court – create the possibility of confusion. MPJA proposes one entity as being responsible for the reporting so that there is clarity. DHS would seem to be the most appropriate entity. This would appear to avoid confusion of the reporting agency and be an appropriate use of state resources.
3. There are significant expansions of reporting information. For example, the vehicle information of someone who would "regularly" transport the identified offender. This particular provision is contained in Section 8. The reality that we see is that parents, grandparents and extended family assist these youth. To extend the disclosure to this group of people would discourage assistance, and therefore rehabilitation, for these youth. There are numerous proposed expansions of the information that must be disclosed, but we have highlighted the one provision as an example. Sections 5 (F) and Section 7, I and J also are areas of over-disclosure which could negatively impact youth.

As stated at the opening, Michigan Probate Judges Association is very supportive of these bills. We have supported and encouraged this amendment to our laws for quite some time. I am enclosing the Resolution which was passed this past year for your information. We thank you for your very important work in this area of our youth.

Very truly yours,

Michigan Probate Judges Association



Dorene S. Allen

Chair of Juvenile and Adoption Issues

Cc: Senator Phil Pavlov
Cusmano, Kandler & Reed

Enclosure: MPJA Resolution

JUVENILE SEX OFFENDER REGISTRY
MICHIGAN PROBATE JUDGES ASSOCIATION
RESOLUTION

Policy Statement to Revise Juvenile Sex Offender Registry

Overview:

Juvenile sex offenders should be viewed differently from adults because of objective biological and developmental differences. In recognition of these differences a completely separate statutory scheme for juvenile registration should be developed. This separate statutory scheme should encompass the necessity of mandatory registration but recognize the severe consequences for juveniles as opposed to adult offenders. Therefore, the undersigned seek support for the following:

The Michigan Probate Judges Association urges the legislature to consider enacting a separate Juvenile Sex Offender Registration Act that complies with the Federal provisions that apply to juveniles. It is our understanding that states are required to comply with the Federal Act in order to continue receiving certain Federal funds.

We the MPJA continue to believe that juveniles are different from adults. We believe juveniles are more capable of change and rehabilitation than adults. We believe it is onerous to lump juveniles together with dangerous adult offenders. We believe it is time to enact a statute that will prevent juveniles under 14 years of age, or juveniles who are 14 or older but have engaged in consensual sex, without any aggravating factors, from forever being branded a "sex offender."

The authority is found as follows:

The Federal statute (SORNA) is found at 42 USC 16902, *et. seq.* The Act sets forth minimum standards for requiring sex offender registration for consensual sexual conduct under the Adam Walsh Act. It **does not** require registration where at least one participant is under 18 years of age and if both participants are at least 13 years old, and neither participant is more than 4 years older than the other. The Federal Act correctly separates and treats juvenile offenders differently than adult offenders. The only juveniles required to register under the Federal Act are those who are at least 14 years of age at the time of the offense "...and the offense adjudicated was comparable to or more severe than aggravated sexual abuse...or was an attempt or conspiracy to commit such an offense." 42 USC 16911 (8). The "aggravated sexual abuse" mirrors the aggravating factors in Michigan's CSC laws. MCL 750.520(b) *et. seq.* (force, coercion, personal injury, armed with weapon, mental incapacity, etc.)

The MPJA acknowledges that cases where the aggravating factors exist, registration, even for juvenile offenders 14 and older may be appropriate. However, the MPJA supports enacting a separate juvenile registration act that encompasses a rational view that juveniles are different

from adults and should not be burdened 25 years to life with adult consequences. The main purpose of the registry is to identify offenders deemed dangerous to public safety, not youngsters who've engaged in a juvenile transgression.

There is a growing acknowledgement that Michigan's Sex Offender Registry needs another look. Michigan's Sex Offender Registry includes far too many low-risk individuals, especially juveniles who become involved in consensual sex. Juveniles are not treated differently than adults, however should be as a Justice Policy Institute Report states:

"Being on a registry can hinder a person's ability to access rehabilitative services needed to lead a productive life and engage in appropriate, legal behavior. Registration (whether public or non-public) impedes access to employment, housing, education and healthy social relationships; all of which have been shown to be an integral part of the re-entry process and a necessity for young people who are trying to turn their lives around."

Courts recognize the differences as in a recent Court of Appeals case where the court asked that the matter of juveniles being registered be revisited:

".. [W]e invite the Legislature to reconsider whether the implied purpose of the act, public safety, is served by requiring an otherwise law-abiding adult to forever be branded as a sex offender because of a juvenile transgression." *People v Dipiazza*, 286 MichApp 137, 147 (2009).

Even the United States Supreme Court (in a case involving whether a life sentence without parole is cruel and unusual punishment for someone under 18 when the crime was committed) stated:

"No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. As petitioner's *amici* point out, developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. See Brief for American Medical Association et al. as *Amici Curiae* 16-24; Brief for American Psychological Association et al. as *Amici Curiae* 22-27. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults. *Roper*, 543 U. S., at 570. It remains true that "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Ibid*. These matters relate to the status of the offenders in question; and it is relevant to consider next the nature of the offenses to which this harsh penalty might apply." *Graham v Florida*, 560 US ____ (2010)

**RESOLUTION PASSED BY MICHIGAN PROBATE JUDGE'S ASSOCIATION
EXECUTIVE COMMITTEE ON AUGUST 25, 2010**